

## OFFICE OF THE ATTORNEY GENERAL



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Honorable Gerald O. Dial  
Member, Alabama Senate  
District No. 13  
P.O. Box 248  
Lineville, AL 36266

Alabama High School Athletic  
Association - Sales Tax - Use  
Tax - Exemption

The Alabama High School Athletic Association is not exempt from Alabama sales or use taxes. The Association could be given an exemption by the Legislature.

Dear Senator Dial:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION

You have requested an opinion concerning the following question:

Is the Alabama High School Athletic Association exempt from the Alabama sales or use taxes under the provisions of Code of Alabama 1975, § 40-23-4(15), or any other section of the sales and use tax law?

FACTS AND ANALYSIS

The Alabama High School Athletic Association (AHSAA) is a private agency founded in 1921 and organized by its member schools to control and promote their athletic programs. The

AHSAA merged with the Alabama Interscholastic Athletic Association in 1968 to form one high school athletic association for the State of Alabama. Currently, the AHSAA is an unincorporated, nonprofit association which is composed of the public and some private schools in the State of Alabama.

As stated in your letter, "The AHSAA has always considered that it was exempt from Alabama sales and use tax based on the EXEMPTION provisions of Code of Alabama 1975, § 40-23-4(15). . . ." The AHSAA has relied upon a letter received from their certified public accountants in 1966 which states that they had been told by an employee of the Alabama Revenue Department that the AHSAA is an instrumentality of the State of Alabama. The letter, dated July 5, 1966, goes on to state that the AHSAA is "exempt from Alabama Sales Tax and Use Tax under Section 755(b), Title 51, Code of Alabama 1940 and As Amended." No written memoranda nor regulation of the Alabama Department of Revenue has been provided to support the claim for exemption by the AHSAA as an instrumentality of the State of Alabama.

Assuming that the letter dated July 5, 1966, correctly states what an Alabama Revenue Department employee may have told the CPA firm, the assertion that the AHSAA is an instrumentality of the State of Alabama and exempt from sales tax is erroneous, and the AHSAA has no vested right in relying upon such an erroneous interpretation of the statute. Boswell v. Abex Corporation, 317 So.2d 317 (Ala. 1975). Furthermore, Section 755(b), Title 51, Code of Alabama 1940, was repealed in 1959 by Acts 1959, 2d Ex. Sess., No. 100, page 298, Section 35, and codified at Title 51, § 786(34), Alabama Code 1958 recompiled. The provisions of Title 51, § 786(34) were incorporated into Code of Alabama 1975 as § 40-23-4. Therefore, Title 51, § 755(b) had been repealed seven years earlier and was no longer in existence when the letter was written by the AHSAA certified public accountants on July 5, 1966.

In addition, the exemption statute relied upon by AHSAA has been amended several times since 1958. The exemption provisions were completely rewritten by Act No. 100, which was passed by the 1959 Legislature and limited the former exemption found in § 755(b), Title 51, to the sale of tangible personal property to the State of Alabama, to the counties within the State and to the incorporated municipalities of the State.

The statutory exemption language remained unchanged until the passage of Act No. 80-625, when Code of Alabama 1975, § 40-23-4, was amended to provide:

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"(a)(15) The gross proceeds of the sale or sales of tangible personal property to county and city school boards, independent school boards, and all educational institutions and agencies of the state of Alabama, the counties within the state or any incorporated municipality of the state of Alabama."

The language in § 40-23-4(a)(15) has remained unchanged since the passage of Act No. 80-625 in 1980.

After examining Code of Alabama 1975, § 40-23-4(a)(15), it is concluded that a private, unincorporated and nonprofit association such as AHSAA is not exempt from Alabama sales or use tax under the provisions of Code of Alabama 1975, § 40-23-4(a)(15). The AHSAA is not a county, city or independent school board, nor an educational institution or agency of the State, the counties or any incorporated municipality of the State.


#### CONCLUSION

Accordingly, the Alabama High School Athletic Association is not exempt from state sales or use tax under the provisions of § 40-23-4(a)(15) nor any other section of the sales and use tax statute. The Association could be given an exemption by the Legislature.

I hope this sufficiently answers your question. If our office can be of further assistance, please contact J. Wade Hope, Legal Division, Revenue Department.

Sincerely,

JEFF SESSIONS  
Attorney General  
By:

  
JAMES R. SOLOMON, JR.  
Chief, Opinions Division

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